

accordance with Sections 2-18-101 and 2-18-102 of the Plan arising from incidents at Board meetings on July 14, 2011, August 11, 2011, November 10, 2011, February 9, 2012, March 8, 2012, May 10, 2012, and June 14, 2012, and the conduct of board members on or about July 27, 2011, October 4, 2011, and January 9, 2012.

3. At all times relevant herein, ENB was a properly formed and constituted Neighborhood Board pursuant to Chapter 15 of the Plan.

4. At all times relevant herein, Ariel De Jesus (“De Jesus”), Kurt Fevella (“Fevella”), Steve Knauer (“Knauer”), Celeste Lacuesta (“Lacuesta”), Frankie McCurley (“McCurley”), Rathbun, and Saipeti Tagovailoa-Amosa (“Tagovailoa-Amosa”) were members of the ENB.

5. On July 14, 2011, Fevella was elected as ENB Chair and John Gollner (“Gollner”) was elected as the ENB First Vice-Chair.

6. On July 14, 2011, Jason Espero (“Espero”) was a member of the ENB. On or about November 10, 2011, Espero resigned as an ENB member.

7. On July 14, 2011, Matthew LoPresti (“LoPresti”) was a member of the ENB. On December 5, 2011, LoPresti resigned as an ENB member.

8. On or about December 8, 2011, Dee Dee Oshiro (“Oshiro”) was appointed as an ENB member.

9. On or about February 2, 2012, Ernest “Joe” Hartsell (“Hartsell”) was appointed as an ENB member.

10. On March 8, 2012, John Gollner (“Gollner”) was elected as ENB Chair and Ariel De Jesus (“De Jesus”) was elected as the ENB First Vice-Chair.

11. On July 12, 2012, Gollner announced that Oshiro resigned as an ENB member and the ENB removed Coby Lynn (“Lynn”) because of the number of absences from regular board meetings. At the end of the July 12, 2012 meeting, Gollner resigned as a member of the ENB.

12. On or about July 12, 2012, Lacuesta was elected as ENB Chair and De Jesus was elected as the ENB First Vice-Chair.

13. On or about September 13, 2012, Rodney Boucher (“Boucher”) and Mitchell Tynanes (“Tynanes”) were appointed as ENB members.

14. On August 3, 2012, all ENB members were notified of the Recommendation and provided an opportunity to respond to the allegations in the Recommendation. The Commission did not receive any response from the ENB.

15. On October 4, 2012, in accordance with Hawaii Revised Statutes Sections 91-9 and 91-9.5, notice of the hearing was provided to the parties via certified mail, return receipt requested.

16. The Recommendation alleges that on the dates set forth in paragraph 2 of this Findings of Fact, the ENB violated the following sections of the Plan: 2-13-101, 2-13-102, 2-13-103, 2-13-104, 2-13-105, 2-13-107, 2-14-111, 2-14-116, 2-14-117 and 2-14-118.

17. Section 2-13-101 of the Plan states that the purpose of the neighborhood plan and the neighborhood boards is to increase and assure effective citizen participation in the decisions of government.

18. Section 2-13-102 of the Plan sets forth the general powers, duties, and functions of the boards, including the responsibility for actively participating in the functions and

processes of government by identifying, addressing, communicating, and seeking solutions to neighborhood issues and concerns.

19. Section 2-13-103 of the Plan prohibits boards and their members from using the official board title or membership position to endorse a candidate for elective public office or engage in any political activity that could reasonably be implied to endorse or support a candidate for elective public office.

20. Section 2-13-104 of the Plan requires board members to perform their duties with the highest standards of ethical conduct and hold their offices or positions for the benefit of the public.

21. Section 2-13-105 of the Plan prohibits members from: (1) soliciting or accepting gifts under circumstances in which it can be reasonably inferred that the gift is intended to influence the member in the performance of the member's official duties, (2) disclosing confidential information gained through the member's office or position, or using confidential information for the member's personal gain or benefit of anyone; and (3) engaging in any business transaction or activity or having a financial interest that is incompatible with the proper discharge of the member's official duties that may tend to impair the independence of judgment in the performance of the member's official duties.

22. Section 2-13-107 of the Plan requires board members to represent the entire district and act responsibly to fulfill the board's democratic and advisory duty, and to avoid private matters or matters under litigation in all discussion and consideration of public affairs, except to the extent that policies, processes, or decision-making of government are involved.

23. Section 2-14-111 of the Plan requires a board to give written public notice of any and all regular, special, or anticipated executive meetings. Notices must include the day, date,

time and place of the meeting, and include an agenda which lists all of the items to be considered. Further, once the notice and agenda are filed with the City Clerk, no items shall be added to the agenda for that duly noticed meeting except by a recorded two-thirds vote of all members to which the board is entitled, and provided that no item shall be added to the agenda if it is of reasonably major importance and action thereon by the board will affect a significant number of persons.

24. Section 2-14-116 of the Plan requires any board member who knows that the member has a personal or private interest, direct, or indirect, to disclose the interest to the board either orally or in writing.

25. Section 2-14-117 of the Plan requires board members to promote and preserve the order and decorum of the board's proceedings and authorizes the presiding officer of the board or a majority of the board to expel any individual whose conduct at the board meeting is disruptive, disorderly, contemptuous, or improper for the conduct of business at the board meeting.

26. Section 2-14-118 of the Plan provides that when board members or persons before the board wish to speak, the member or person must address the chair, be recognized before proceeding, and confine remarks to the subject under discussion, avoiding personalities and abusive language.

27. The ENB held an initial convening meeting on July 14, 2011. During the election of officers, there was some banter between Knauer and Gollner. The Commission finds that there was no breach of order and decorum during the election of officers. The Commission also finds that the ES failed to provide sufficient evidence to support the ES's allegation that board members engaged in divisive personal attacks during the election of officers.

28. On July 27, 2011, the Civil Beat published an article about an email from Councilmember Tom Berg (“Berg”) to Lacuesta, who is a member of Berg’s staff. In this email, Berg stated that Lacuesta was dismissed from service because she failed to defend the Leeward bikeway issue at a meeting of the ENB. The Civil Beat also published the email from Berg to Lacuesta. The Commission finds that Lacuesta was not dismissed from service and continues to work for Berg. The Commission also finds that the ES failed to provide sufficient evidence to support the claims that the board engaged in political activity, breached the standards of conduct, engaged in conflicts of interest, and failed in its representative capacity when the Civil Beat published the article and email from Berg to Lacuesta.

29. At a regular meeting of the ENB on August 11, 2011, the ENB members verbally attacked the Mayor’s representative because they did not like the responses she delivered on behalf of the City. There was no effort by the Chair or any of the members to stop the ENB from being disruptive or disrespectful toward the Mayor’s representative. The Commission finds that Respondent violated section 2-14-118 of the Plan.

30. On October 4, 2011 Knauer sent an email to the Board of Education (“BOE”), in which he called the principal of Keoneula Elementary School “a liar” and asked that she be reprimanded. The Commission finds that the ENB did not authorize Knauer to send the email, so he was not acting as a representative of the ENB. The Commission also finds that Knauer was not acting as a representative of the ENB when he sent the email to the BOE because the ENB did not authorize Knauer to take such action. The Commission further finds that the principal informed the ENB chair of the email, but the chair and members of the ENB failed to take any action to address Knauer’s actions. Thus, the ENB failed to uphold the general powers, duties and functions of the board, adhere to the standards of conduct, and act in a representative

capacity. Accordingly, the Commission finds that Respondent violated sections 2-13-102, 2-13-104, and 2-13-107 of the Plan.

31. At a regular meeting of the ENB on November 10, 2011, the ENB discussed the reapportionment of City Council districts. During this discussion, Lacuesta failed to disclose that she is employed by Berg. But, the Commission finds that the ES failed to provide sufficient evidence to support the contention that the ENB members violated the provisions of the Plan governing disclosures and conflicts of interest.

32. The ENB's Consumer Affairs Committee scheduled a meeting on January 12, 2012. Knauer, the committee chair, filed the notice and agenda for this meeting. The agenda included items that allowed residents to raise concerns about consumer subjects including problems with professionals such as doctors, dentists, and lawyers, and services such as plumbers, electricians, and contractors. The Commission finds that these agenda items are not within the purpose and scope of the neighborhood boards. But while Knauer filed the notice and agenda for this committee meeting, there was no evidence that the ENB chair or other members of the board were involved. So, even though the Commission finds that the agenda that Knauer filed may have violated the Plan and the Commission ultimately finds that the ES failed to provide sufficient evidence to support the allegation that the ENB violated the Plan.

33. At a regular meeting of the ENB on February 9, 2012, the ENB removed the chair without properly placing the item on the agenda. The Commission finds that a motion was made to remove Fevella as chair of the ENB. Over the objections of a board member, who noted that this item was not properly noticed on the agenda, the board adopted the motion to remove Fevella as the chair. Further, the Commission finds that the removal of the chair was not properly added to the agenda, it is an item of reasonably major importance, and action thereon by

the ENB would affect a significant number of persons. Thus, the Commission finds that the Respondent violated section 2-14-111 of the Plan.

34. At the ENB's regular meeting on March 8, 2012, the ENB added to the agenda the board's endorsement of the Ewa Emergency Preparedness Committee. The Commission finds that the ENB received more than a two-thirds vote of all members to which the board is entitled before it added the item to the agenda. The Commission also finds that the endorsement of the Ewa Emergency Preparedness Committee is an item of reasonably major importance and action thereon by the board will affect a significant number of persons. Accordingly, the Commission finds that Respondent violated section 2-14-111 of the Plan.

35. At the regular meeting of the ENB on May 10, 2012, State Representative Kymberly Pine ("Pine") was present to give a report of bills that she authored that passed during the 2012 legislative session. During the discussion that followed, Lacuesta challenged Pine's attendance record in 2006. The Commission finds that at the time of this ENB meeting, Pine and Berg were candidates for the same City Council District seat and that Lacuesta failed to disclose that she is an employee of Berg's office. Further, Lacuesta's challenge of Pine's 2006 attendance record caused audience members to protest and order and decorum were lost. While a recess was eventually called, the Commission finds that the chair and members of the ENB failed to take appropriate action to promote and preserve order and decorum. Although Lacuesta may have violated sections 2-13-103, 2-13-105, 2-14-116, and 2-14-118 of the Plan, the Commission finds that the ES failed to provide sufficient evidence to find that the ENB violated these provisions. The Commission finds that the ENB's failure to preserve order and decorum violated sections 2-13-104 of the Plan, because the ENB failed to perform its duties in a manner so that the public may have trust and confidence in the integrity of the neighborhood board

system and instead permitted a member to challenge Pine on a matter that was not on the agenda and was not related to an item on the agenda.

36. At the regular meeting of the ENB on June 14, 2012, order and decorum was lost during Berg's report and confrontations occurred between board members, Neighborhood Commission Office staff, and members of the public. A member called a point of order in an effort to regain control of the meeting, but it was not addressed. A recess was called and quorum was lost when less than half of the board members returned to the meeting. There was testimony from several witnesses that the meeting was reconvened, but it is not clear whether the board actually conducted business without a quorum. The Commission finds that the ENB chair and members failed to promote and preserve the order and decorum of the board's proceedings. The ENB can and should do more to keep its meetings on-track and more effectively prevent members of the audience from becoming disruptive at the meetings. The failure to address the points of order that were called contributed to the disruption. The Commission finds that section 2-14-117 of the Plan was violated.

37. Although there was testimony from several witnesses that the situation has improved, the ENB is still dysfunctional at times.

38. Many ENB members are unfamiliar with the Plan and as a result the meetings continue to be disrupted.

CONCLUSIONS OF LAW

1. The Recommendation was filed in accordance with the provisions of Section 2-18-101(a)(1) of the Plan.

2. The parties were properly noticed pursuant to HRS Sections 91-9 and 91-9.5.

3. This hearing was properly conducted in accordance with HRS Chapter 91 and Section 2-18-102 of the Plan.

4. This matter is properly before the Commission pursuant to Section 2-18-102 of the Plan and the Commission has the authority to review a Neighborhood Board and/or a Neighborhood Board member's action(s) and issue sanctions in accordance with Sections 2-18-102 and 2-18-104 of the Plan.

5. Pursuant to HRS Section 91-10(5), the ES has the burden of proof including the burden of producing evidence as well as the burden of persuasion by a preponderance of the evidence.

6. No response to the Recommendation was filed by the ENB. Therefore, in accordance with Section 2-18-101(e) of the Plan, the factual allegations of the Recommendation are deemed admitted by the ENB.

7. Based on the record, the Commission finds that the Respondent violated Sections 2-13-102, 2-13-104, 2-13-107, 2-14-111, 2-14-117 and 2-14-118 of the Plan.

8. The Commission further finds that the ENB's conduct demonstrates that its chair and members are not familiar with the provisions of the Plan and that the ENB's inability to maintain order and decorum and its repeated displays of disrespect towards each other and the members of the public has resulted in an atmosphere of disorder and contempt among all persons attending the meetings and significantly impaired the ENB's ability to conduct meaningful public discussion of important neighborhood and island-wide issues.

9. The Commission also finds that there are mitigating circumstances, including the change in the ENB chairmanship and ENB membership, which must be considered in determining a penalty for the ENB's violations of the Plan.

DECISION AND ORDER

Based upon the foregoing, the Commission hereby finds that the Ewa Neighborhood Board No. 23 has violated Sections 2-13-102, 2-13-104, 2-13-107, 2-14-111, 2-14-117 and 2-14-118 of the 2008 Neighborhood Plan, as amended.

The Commission further finds that the violations committed by the Ewa Neighborhood Board No. 23, rather than promoting open expression and discussion of ideas relative to government and community processes and activities, have materially impaired the Board's ability to serve as a community forum. Additionally, the violations have materially impaired the Board's ability to effectively participate in the decisions of government.

Therefore, it is hereby ordered in accordance with Section 2-18-104 of the 2008 Neighborhood Plan, as amended, that as a sanction for the Board's multiple violations of the 2008 Neighborhood Plan, as amended, the Ewa Neighborhood Board No. 23 is hereby on probation from the date of this decision and order up to and including June 30, 2013. During the probationary period, the Commission shall continue to monitor the operations of the Ewa Neighborhood Board No. 23 and shall periodically review the conduct and operations of the Board and may issue further sanctions against the Board.

It is hereby further ordered that all members of the Ewa Neighborhood Board No. 23 are required to participate in mandatory training classes, organized by the Executive Secretary and/or his designee, which will be held on January 10, 2013, January 12, 2013, and January 19, 2013. The training shall cover Sections 2-13-102, 2-13-104, 2-13-107, 2-14-111, and 2-14-117 of the 2008 Neighborhood Plan, as amended.

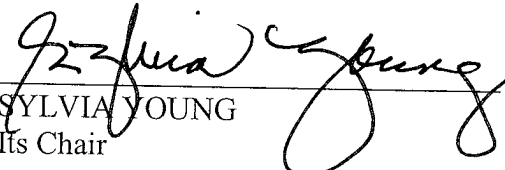
It is hereby further ordered that any Board member who fails to attend the mandatory training classes, and does not request an extension of time for good cause prior to the first

training session, will not be allowed to return to the Board until such time as the training classes are completed. Any meeting date which is missed as a result of the Board member's failure to attend the training sessions shall be counted as an absence under Section 2-14-106 of the 2008 Neighborhood Plan, as amended.

It is hereby further ordered that the Ewa Neighborhood Board No. 23 shall utilize an independent presiding officer for all ENB meetings held on or before June 30, 2013. The independent presiding officer shall be designated by the Executive Secretary. The Ewa Neighborhood Board No. 23 may discontinue its use of the independent presiding officer prior to June 30, 2013, by order of the Neighborhood Commission.

DATED: Honolulu, Hawaii, DECEMBER 4, 2012.

NEIGHBORHOOD COMMISSION

By 
SYLVIA YOUNG
Its Chair

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